No. 76-1817

In the Supreme Court of the United States

OCTOBER TERM, 1977

STOCKTON DOOR CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BORD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals is not reported (Supp. J.S. 1-2). The decision and order of the National Labor Relations Board (J.S. App. 1-45) are reported at 218 NLRB 1053.

JURISDICTION

The judgment of the court of appeals was entered on March 31, 1977 (J.S. App. 46-55). A document styled a "Jurisdictional Statement" was filed on June 21, 1977.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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[1]The Company's "Jurisdictional Statement" should be treated as a petition for a writ of certiorari. 28 U.S.C. 2103.

QUESTION PRESENTED

Whether the Board properly found that the successor employer's bargaining obligation to the union representing the predecessor employer's employees was not extinguished when the successor employer closed the predecessor employer's plant and reopened it ten days later without making any meaningful change in the operation of that plant or in its employee complement.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*, are as follows:

> Section 8. (a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *
>
> * * * * *
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT

Petitioner ("Stockton") is a manufacturer and wholesaler of blank doors, with facilities in Stockton, California. Its employees are represented by Local No. 439, International Brotherhood of Teamsters ("Teamsters") (J.S. App. 26, 28). In March 1973, Stockton purchased all the stock of a financially troubled customer, Valley Millwork and Supply Company ("Valley"), a manufacturer and retailer of pre-hung doors in Salida, California (J.S. App. 3, 27).[2] Stockton retained Valley's corporate form and name, and continued to operate it as a retail outlet (J.S. App. 3, 27). Valley's employees were represented by Delta-Yosemite District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO ("Carpenters"), and their current collective agreement was effective until June 30, 1974 (J.S. App. 28). After acquiring Valley, Stockton recognized the Carpenters as the employees' bargaining representative and assumed Valley's collective bargaining agreement (J.S. App. 7).

On March 15, 1974, based on advice that Valley could not be operated profitably, Stockton closed it down and terminated its employees, with the intention of moving the operation to one of Stockton's facilities in Stockton, California (J.S. App. 27, 31). On March 21, Stockton notified the Carpenters that Valley had gone out of business and that "as we are no longer operating Valley Millwork, Inc., there is no reason to negotiate a new contract" (J.S. App. 3-4). The intended move did not prove feasible, however, and, on March 25, 1974, Stockton reopened the Valley plant, not as Valley Millwork and Supply Company, but as a part of Stockton Door Company. The reopened facility was operated as a wholesaler of knocked-

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[2]The takeover was prompted by Valley's financial difficulties. Stockton was Valley's largest creditor, and at a creditor's meeting purchased all of Valley's stock and settled the claims of the other creditors. Stockton's officers and directors became Valley's officers and directors, but Valley's employees, plant, and equipment were retained, and the same product was manufactured (J.S. App. 3, 27).

down doors[3] (J.S. App. 4). Stockton rehired the former shop superintendent and two of the three former employees, and utilized the same equipment (J.S. App. 4, 6). Thereafter, on April 1, the Carpenters wrote to Stockton, noting that the Valley plant was still in operation and advising that it still represented the employees and that the bargaining agreement was still in effect (J.S. App. 29).

In the meantime, during March 1974, Stockton President Guy initiated discussions with the Teamsters[4] regarding the Valley facility. In April, Guy informed the Teamsters of the Carpenters' claim to represent the Valley employees, whereupon the Teamsters informed Guy that their contract required that the Valley operation be incorporated thereunder (J.S. App. 30). Guy agreed to apply the Teamsters' contract to the Valley employees. Thereafter the employees, having been told by their supervisor that they had to join the Teamsters, applied for membership and began paying dues to the Teamsters; Stockton paid their initiation fees (J.S. App. 30-31, 38).

The Board found, *inter alia*, that Stockton violated Section 8(a)(5) of the Act by withdrawing recognition from the Carpenters and repudiating that union's collective agreement. The Board further found that Stockton further violated Section 8(a)(2) and (3) of the Act by recog-

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[3]In pre-hung units, which Valley largely sold before the shutdown, the jambs are nailed on the doors; that operation is not performed on knocked-down units (J.S. App. 4).

[4]The contract between the Teamsters and Stockton contained a union security clause, purported to apply to all plants operated by Stockton in the future, and was effective through May 30, 1975 (J.S. App. 28).

nizing the Teamsters and applying its contract to the Valley employees (J.S. App. 9).[5]

The Board explained (J.S. App. 7-8):

> When Stockton acquired Valley in March 1973 and continued to operate it without change in the same industry, with the same industry, with the same employees, it became Valley's successor. *National Labor Relations Board* v. *Burns International Security Services, Inc.*, 406 U.S. 272 (1972). As Valley's successor, it was required to recognize and bargain with the incumbent collective-bargaining representative of the employees in the production and maintenance unit * * *.
>
> * * * * *
>
> Stockton Door, as the new owner, was not required to assume its predecessor's contract; nonetheless, it did assume the contract, considered it binding, so advised the Carpenters, and gave the contract full force and effect until March 15, 1974, when Valley closed. Once Stockton by its actions assumed the contract, it was bound by it thereafter. [Citation omitted.]

The Board further found that the changes made by Stockton, after the reopening in March 1974, provided no lawful reason for abrogating its contract with the Carpenters and recognizing the Teamsters. The Board stated (J.S. App. 6):

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[5]The Board also found that Stockton unlawfully paid the Valley employees' Teamsters initiation fees (J.S. App. 4) and that the Teamsters violated Sections 8(b)(2) and (1)(A) of the Act by accepting recognition and entering into a contract with a union security clause when it did not represent a majority of the affected employees (J.S. App. 9). No issue involving these findings is presented here.

> * * * there was no meaningful change in the operation of the plant after the Valley identification was abandoned. That Stockton operates as a wholesaler is a detail in the mode of distribution that has had little or no effect on the work of the employees in the production and maintenance unit. Employees no longer nail jambs together, but that can hardly be considered material. These changes do not warrant withdrawal of recognition from the incumbent collective-bargaining representative.

The court of appeals, in a *per curiam* opinion, upheld the Board's decision and enforced its order (Supp. J.S. 1-2).

ARGUMENT

Petitioner does not contest the Board's findings that, prior to the closing of the Valley plant on March 15, 1974, Stockton succeeded to Valley's bargaining obligation to the Carpenters Union, and further assumed Valley's contract obligation to that Union. Petitioner contends, however, that those obligations terminated when it closed the Valley plant and then reopened it, because the Valley operation was abandoned and it was replaced by a different operation (J.S. 8-9). But the Board found that there was no meaningful change in the operation of the Valley plant or in its employee complement (J.S. App. 5-6). Accordingly, the only question presented is whether there is substantial evidence to support the Board's finding. Such an issue does not warrant further review. See *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 490-491.[6]

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[6]The cases cited by petitioner (Pet. 8-9) are inapposite. With one exception, they involve the question whether the employer had a discriminatory motive in making business changes or discharging employees during union organizing compaigns. And in *National Labor Relations Board* v. *Brown-Dunkin Co.*, 287 F. 2d 17, 20 (C.A. 10), the court upheld the Board's conclusion that the employer violated the Act by not bargaining with the union concerning the employer's decision to contract out the work of the bargaining unit.

In any event, the court of appeals correctly concluded that there was adequate evidentiary support for the Board's finding. As shown above (pp.), although Stockton may have intended to discontinue operations when it closed the Valley plant, it did not in fact do so. Instead, it reopened the plant ten days later and continued to operate the same equipment, with the same employees performing essentially the same tasks under the same supervision.

Moreover, neither the abandonment of the Valley corporate shell, nor the change from retail to wholesale distribution of the product assembled at the Salida plant, had any significant effect on the employees' working conditions. The only effect it had on those conditions was to eliminate the nailing of door jambs, which the Board properly concluded was not a material change (J.S. App. 6). Finally it is immaterial that Stockton may have believed that it was bound to apply the Teamsters' contract to its Salida operation. Cf. *International Ladies' Garment Workers Union* v. *National Labor Relations Board*, 366 U.S. 731, 738-740.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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